

HONORABLE BARBARA JACOBS ROTHSTEIN

JUDGE MR

CV 01-00159 #00000058

FILED ENTERED  
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JAN 18 2002 MR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

AT SEATTLE  
CLERK OF DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
DEPUTY

MYLES LAWRENCE HILLS,

NO C01-159R

Plaintiff,

v

PLAINTIFF'S RESPONSE AND  
BRIEFING RE BIFURCATION

SEATTLE POLICE DEPARTMENT, CITY  
OF SEATTLE, NORM STAMPER, JAMES  
KIM, PATRICK CHANG, AND THE  
COUNTY OF KING, AND JOHN AND JANE  
DOES 1-10,

Defendants

**I. RELIEF REQUESTED**

COMES NOW the Plaintiff Myles L. Hills, by and through his attorney of record,  
and moves the Court for an order denying bifurcating the trials into one trial for Plaintiff  
and Defendant King County et al (hereinafter referred to as "Defendant County") and one  
trial for Plaintiff and Defendants Seattle Police Department, City of Seattle, Norman  
Stamper, James Kim and Patrick Chang (hereinafter referred to as "Defendant City")  
While some of the original purposes for Plaintiff requesting separate trials have gone, one  
set of Defendants, Defendant King County, were ready for trial and met all pretrial

PLAINTIFF'S RESPONSE AND BRIEFING RE  
BIFURCATION - 1

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**ORIGINAL**

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deadlines, and the other set of Defendants, Defendant City, chose to not meet deadlines for provide discovery and then by Order of this Court on two motions were not compelled to answer or supplement their answers, separate trials would prejudice the Plaintiff herein

## II. RELEVANT FACTS

2 1 For purposes of this pleading, the Plaintiff adopts the factual recitation stated in paragraphs 2 15 through 2 31 of Plaintiff's Response to the Defendants Represented by Lisa M Marchese Motion for Summary Judgment, pp 7 – 15 regarding the actions of the Defendant City

2 2 For purposes of this pleading and with regard to the actions of Defendant County, the Plaintiff adopts the factual recitation stated in paragraphs 2 2 through 2 5 of Plaintiff's Response to King County's Motion for Summary Judgment and the Declaration of Myles Hills and in particular

7 I have no medical records that distinguish the injuries I received to my left wrist from those received from the excessive force in the handcuffing procedure used by the Seattle Police Department and the continued force used by the King County Employees that included handcuffing and lifting me by my arms to move me down the hall when my hands were handcuffed behind my back I request that the Court find King County jointly and severally liable unless the Defendants can distinguish which injuries I received from which Defendant

Hills Declaration, pp 2-3 In addition, the Plaintiff adopts the sworn statement by the Plaintiff, attached to the Declaration of Atwood as Exhibit 3, wherein he separates those damages he can attribute to Defendant City or Defendant County and those he cannot His sworn statement can only separate property damages for Defendant King County for clothes they took off him and ruined (\$3 39, \$6 00, and \$2 67), and for Defendant City for the property damage sustained to his car, towing charges, and costs of criminal defense (\$607 07, \$179 00, and \$1,900 00) None of the other special and general

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1 damages can Plaintiff separate and he has asserted both Defendants are jointly and  
2 severally liable for the damages shown on page 2 and 3

3       2 3     The Defendant City was required by its own rules to prepare a report for  
4 use of force SPD 1 145, for vehicle pursuit and ramming SPD 1 141, for use of force SPD  
5 1 149, for use of chemical restrains SPD 1 169, and for use of full restraint positin SPD  
6 1 173 It didn't The Defendant City was required by its own rules to follow procedures  
7 for arrest procedures SPD 2 001, booking procedure including prisoner assessment SPD  
8 2 005, physical evidence SPD 2 045, investigatory holds of vehicles SPD 2 061, vehicle  
9 evidence and seizures SPD 2 065, use of push bars SPD 2 085, impounding vehicle SPD  
10 2 089, and unlawful possession of liquor SPD 2 129 Plaintiff alleges it did not nor  
11 provisions under Title III of SPD rules  
12

### 13                                   **III. STATEMENT OF ISSUE**

14           Whether an order should be entered permitting separate trials of Defendant King  
15 County and Defendant City would prejudice the Plaintiff herein

16           Whether an order should be entered permitting separate trials on the issue of  
17 liability of Defendant King County to the bench and a separate trial on the issue of  
18 damages and liability of Defendant King County and Defendant City  
19

### 20                                   **IV. EVIDENCE RELIED UPON**

21           Plaintiff relies upon the Declarations of Myles L Hills, Sarah L Atwood, and the  
22 attachments thereto, previously filed with Plaintiff's Responses to Defendant County and  
23 Defendant City's motions for summary judgment and the records and files herein

### 24                                   **V. AUTHORITY**

25           For purposes of this pleading, the Plaintiff adopts the authority of Defendant King

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1 County but denies sole reason for bifurcation is the dispositive issue of trying the officers  
2 separate from all other defendants

3 The Court's Order dated January 2, 2002 denied Plaintiff's Motion for separate  
4 trials on the basis that "the trial of plaintiff's claims against King County and the City of  
5 Seattle will involve the same witnesses and the same evidence" Plaintiff respectfully  
6 disagrees that the claims, witnesses and evidence are the same Plaintiff has alleged and  
7 asserts that Defendant King County has joint and several liability for the injuries he  
8 sustained and that the burden lies with Defendant King County to prove otherwise

9  
10 Restatement (Second) of Torts §§ 433A, 433 B

11 Restatement (Second) of Torts § 433B (2) states

12 Where the tortuous conduct of two or more actors has combined to bring about  
13 harm to the plaintiff, and one or more of the actors seeks to limit his liability on  
14 the ground that the harm is capable of apportionment among them, the burden of  
proof as to the apportionment is upon each such actor

15 Restatement (Second) of Torts, p 441 A trial on the issue of Defendant King County's  
16 liability would have been dispositive of their joint and several liability to Plaintiff

17 Segregating issues of liability and damages into separate trials has been the most  
18 common application of FRCP 42(b) *Robinson v. Sheriff of Cook County*, C A 7<sup>th</sup>, 1999,  
19 167 F 3d 1155, *certiorari denied* 120 S Ct 71, 528 U S 824, 145 L Ed 2d 60 (stating in  
20 dictum that separate trials on liability and relief is the most common application of Rule  
21 42 (b))

22 Here, had the Court granted Plaintiff's Motion for separate trials, trying the issue  
23 of Defendant King County's liability first, they would have to meet their burden of proof  
24 that liability for Plaintiff's injuries could or could not be separated Then at a second  
25

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BIFURCATION - 4

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1 trial, following completion of Plaintiff and Defendant City's discovery disputes, the  
2 Court could have tried Plaintiff's claims against Defendant City, including the officers  
3 Plaintiff herein would not have been prejudiced by such separate trials. The opportunity  
4 for such separate trials for these reasons is now moot.

5       The Defendants join in requesting a separate trial for the Defendant Officers and a  
6 separate trial for the Defendant Governmental entities, the City and King County. The  
7 Plaintiff opposes a separate trial for the Defendant Officers and a separate trial for the  
8 Defendant Governmental entities, the City and King County based on the prejudice to  
9 him. Bifurcation is inappropriate because evidence against the Defendant Governmental  
10 entities in the second trial would be inadmissible or prejudicial to the Defendant Officers  
11 in the first trial. The Defendants have collaborated in every stage of this case opposing  
12 the relief Plaintiff has requested: a two month continuance of pretrial and trial deadlines,  
13 the Motion to Sever, the Motion to Compel, and the Motions for Summary Judgment.  
14 There is no reason not to expect Motions in Limine from these Defendants to prevent the  
15 Court from hearing in the first trial evidence against the individual officers that Plaintiff  
16 could submit were the trials combined. Bifurcation is violative of the Constitution if the  
17 same issue is submitted to two juries. Here the Defendants propose two juries make  
18 factual decisions on facts that will be raised at both trials. Several districts have found  
19 bifurcation violative of the Constitution. The court in *Alabama v. Blue Bird Body Co.*,  
20 573 F.2d 309 at 318 (1978) stated.

21  
22  
23       This limitation on the use of bifurcation is a recognition of the fact that inherent  
24 in the Seventh Amendment guarantee of a trial by jury is the general right of a  
25 litigant to have only one jury pass on a common issue of fact.

**VI. CONCLUSION**

Based upon all of the above, this Court should not bifurcate Plaintiff's claims against the two arresting Seattle Police Officers Kim and Chang for trial purposes from his claims against the City of Seattle and King County based on the prejudice to Plaintiff

DATED this 18 day of January, 2002

Law Offices of Christopher A. Benson

By



Sarah L. Atwood, WSBA# 31199

Of Attorneys for Plaintiff

Certificate of Service

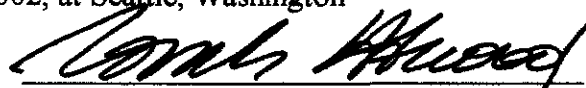
The undersigned certifies under penalty of perjury according to the laws of the United States and the State of Washington that on this date I caused to be served in the manner noted below a copy of this document on the following parties/counsel

Lisa M Marchese  
Stafford Frey Cooper  
2500 Rainier Tower  
1301 Fifth Avenue  
Seattle, WA 98101-2621

Timothy M Blood  
c/o Norm Maleng, Prosecuting Attorney  
Civil Division, Tort Section  
900 King County Administration Bldg  
500 Fourth Avenue  
Seattle, WA 98104

☒ Via Facsimile on January 18, 2002  
☒ Via Mail  
☐ Via Personal Delivery  
☐ Via Messenger

DATE D this 18<sup>th</sup> day of January, 2002, at Seattle, Washington

  
Sarah L. Atwood, WSBA# 31199

PLAINTIFF'S RESPONSE AND BRIEFING RE  
BIFURCATION - 7

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